HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WP M/S No. 1151/2003
Om Prakash Gupta
Vs
Addl. District Judge
Dehradun & others

Approved for reporting.

~~Not approved for reporting~~

Date of decision 21.8.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 1151 (MS) OF 2003

Om Prakash Gupta,
S/o late Lal Chhagan Lal Gupta,
R/o Panditwari, Dehradun. .....Petitioner.

Versus

1. Addl. District Judge/Fast Track Court-II, Dehradun.
2. Prescribed Authority, Dehradun.
3. Subhash Bedi @ Subhas Garg,
   S/o Sri Lajpat Rai, R/o 76, Dhartwala,
   Dehradun. .....Respondents.

Dated: 21.08.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Shobhit Saharia, Advocate for the petitioner/landlord, Sri Rajendra Dobhal, Advocate for the respondent no. 3/tenant and Standing Counsel for the respondents no. 1 and 2.

FACTUAL MATRIX OF THE CASE

2. By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order passed by the respondent no. 1 dated 20.08.2003 (Annexure No. 4 to the writ petition) in Rent Control Act (RAC) No. 152 of 2001 and release the shop in question in favour of the petitioner.

3. Briefly stated, an application under Section 21 (1) (a) of the U.P. Act No. 13 of 1972 was filed by the petitioner praying for eviction of the shop situated on the first floor of

Shop No. 6, Chhagan Lal Building Panditwari, Dehradun. The application was allowed by the Prescribed Authority. However, the appellate Court has allowed the appeal.

BONAFIDE NEED

4. According to the case of the landlord, in the year, 1994 by virtue of family settlement, the premises in dispute has come in the share of the petitioner. The respondent is doing the business of repairing of Electronic Goods. It was stated by the petitioner that the business of the petitioner is an expanding business and there is a turn-over of 20 lacs per year and for that purpose, he requires the shop for establishing the tailoring work there in the shop so that the customers may be benefited from the tailoring work also. In paragraph 10 of the application is has been stated that after keeping the workers, he will start the business of tailoring work in order to satisfy the customers. Paragraph 10 is quoted below:-

> "यह कि प्रार्थी प्रष्नगत दुकान में कारीगर रखकर टेलरिंग का कारोबार करना चाहता है। जिससे वह अपने ग्राहकों को अधिक सुविधा प्रदान कर सके व लाभ प्राप्त कर सके। प्रार्थी को व्यापार का प्रयार्प्त अनुभव प्राप्त है और उसके पास टेलरिंग का कारोबार प्रारम्भ करने के लिए आर्थिक साधन उपलब्ध है।"

5. A written statement was filed and it has been stated in paragraph 10 of the written statement that the petitioner has no experience in the job of tailoring business. Relevant paragraph 10 of the written statement is quoted below:-

> *"10. That para 10 of the application is wrong and false and the same is not admitted. It is wrong to say that the applicant has any business experience in the job of tailoring, the*

applicant does not know even how to thread the needle not to speak of tailoring business. The applicant has innovated this fancy ground just for the purpose of this release application, the actual facts have been further discussed in the additional pleas."

6. Before the prescribed authority, affidavits on behalf of the petitioner as well as respondents have been filed.

7. The Prescribed authority after recorded a finding has come to the conclusion that the petitioner requires the premises for augmenting his income. Finding of the prescribed authority is quoted below:-

"कि प्रार्थी ने अपनी सम्पत्ति का विवरण छिपाया है। प्रार्थी को अपनी आय बढ़ाने का अधिकार प्राप्त है कपड़े से सम्बन्धित अन्य टेलरिंग का व्यवसाय चलाकर वह अपनी आय बढ़ाने के साथ साथ अपने ग्राहकों को भी सुविधा देना चाहता है अतः इसके लिए उन्हें विवादित दुकान की आवष्यकता सद्भावी होना सिद्व है चूंकि प्रार्थी के पास कपड़े की दुकान के पास में ही उक्त व्यवसाय है और उसके पास ऐसी कोई व्यवस्था उपलब्ध नहीं है जिसमें कि वह टेलरिंग का व्यवसाय भी कर सके। विपक्षी की ओर से यह भी तर्क दिया गया है कि प्रार्थी के पास 1000 वर्ग फुट का कवर्ड एरिया उनके पास है जबकि वादी के शपथपत्र कागज संख्या 51 ग में 490 वर्ग फुट क्षेत्र हाना बताया। प्रार्थी ने अपने शपथपत्र में इससे स्पष्ट इंकार किया है कि 1000 वर्ग फुट का एरिया वादी ने दुकान को तीन खनी होना बताकर यह भी स्पष्ट किया कि उसमें कितने कितने भाग में क्या क्या कार्य होता है। स्वभाविक रूप से अपनी दुकान के स्तर को छोटा कर गोपनीय सामान रखने वाल जगह में वादी टेलरिंग के कारीगरों को बैठाने की कार्यवाही नहीं कर सकता है अतः उपरोक्त

परिस्थितियों में प्रार्थी की विवादित दुकान की टेलरिंग के व्यवसाय हेतु आवष्यकता सद्भावी एवं वास्तविक पाता हूँ"

7. The prescribed authority has allowed the application filed by the petitioner on 13.08.2001.

8. Aggrieved by the said order, the respondent/landlord went is appeal, the appellate Court has allowed the appeal and has set aside the findings of the prescribed authority, hence the present writ petition.

9. It is well established that *the need has to be seen at the time when the application was filed.* Admittedly, the P.A. Case No. 23 of 1996 was filed by the petitioner in the year, 1999 and since then the matter is pending.

10. It is well known that everyone has right to augment his own income.

11. After relying upon various judgments in ***N.S. Dutta Vs. VIIth Addl. District Judge, Allahabad 1984 (1) ARC Page 113,*** it has been held as under:-

> *"In M/s Central Tobacco Co. Vs. Chandra Prakash an unreported decision of the Supreme Court of 1969, which has been followed in Bega Begum (supra) has been followed in Kewal Singh v. Lajwanti (1980) 1 SCC 290. The Court is entitled also to take into account the fact that the tenant has neither alleged, nor proved to have made effort to have an alternative accommodation. Nur Ilahi v. IIIrd Addl. District Judge, Saharanpur and others, 1983(1) ARC 412; Sanwal Das Binka, 1982 (1) ARC 24 (supra). Moreover, the non-availability of alternative accommodation to the tenant*

is in itself not the adequate ground to reject the landlord's application vide Kamil Khan v. IIIrd Addl. District Judge, Bareilly and others, 1982 (1) ARC 783. In Suraj Prasad Sharma v. IInd Additional District Judge, Mirzapur and others, (1983) Alld. C.J. 432: 1983 (1) ARC 427, brother M.N. Shukla, J. observed:-

> *"It is a common place fact that invariably when an application under Section 21 of the Act is allowed, the tenant has to quite and this involves discomfort but if this alone were sufficient to non-suit the landlord, no application for release could ever be allowed. Judging comparative hardships' is a matter of deeper import and it would be a lopsided order which dismisses a landlord's application for release merely with the plaintiffs dinous observation that the tenant would be "thrown on the street". The physical dispossession of the tenant is the necessary concommitment of every release application of the landlord which is allowed. However, well-founded the application may be an element of inconvenience or discomfort is inherent in the very process of vacating an accommodation. A release application cannot be thrown out merely; with the bald observation that the tenant would suffer greater hardship."*

27. In Radhey Shyam v. IVth Additional District Judge, Bulandshahr and others, 1980 ARC 594 (supra) the appellate court held that the landlord should himself take one of the shops pointed out by him on rent as the landlord's son had to start a business so that he could make the beginning anywhere without any prejudice, the tenants had a goodwill in respect of the shop in

dispute having been carrying on business therein for nearly forty years. Learned single Judge considered as weighing the scales far too much against a landlords and it was observed that 'if the view taken by the District Judge is accepted, the landlord intending to start a business can never expect to get his shop. For his claim could always be defeated by a sitting tenant on the short ground that the landlord has to make a start while the tenant has already been in the business for a longer time."

12. The findings of the prescribed authority, therefore, has been interfered by the appellate Court without setting aside the findings with regard to the augmentation of the income.

13. In ***Mst. Bega Begum V/s Abdul Ahmad Khan 1979 A.I.R. SC page 272,*** it has been held:-

"The connotation of the term of the term 'requirement should not be artificially extended nor its language so unduly stretched or strained as to make it impossible or extremely difficult for the landlord to get an order of release. Such a course would defeat the very purpose of the Act, which affords the facility of eviction of the tenant to the landlord on certain specified grounds contemplated under section 21 of the Act. The provisions contained in the Act strike a just balance between the genuine need of the landlord on the one hand and the great inconvenience and troubles of the tenants on the other. Since section 21 of the act is meant for the benefit of the landlord, therefore, it must be so construed as to advance the object behind the said provision. The tenant

has to establish that if he is evicted he will suffer greater hardship as compared to the landlord and must lead clear evidence to show that in spite of the best efforts he was unable to get another alternative suitable accommodation in the absence whereof the scale of relative hardship may be tilted in favour of the landlord as the inconvenience, loss or trouble resulting from a denial of the order of release in favour of the landlord will for out weight the prejudice or the inconvenience which may likely be caused to the tenants."

14. It has been observed by the Apex Court in ***Gaya Prasad v. Pradeep Srivastava AIR 2001 SC 803*** as under:-

"15. The judicial tardiness, for which unfortunately our system has acquired notoriety, causes the list to creep through the line for long long years form the start to the ultimate termini, is a malady afflicating the system. During this long interval many many events are bound to take place which might happen in relation to the parties as well as the subject matter of the list. If the cause of action is to be submerged in such subsequent events on account of the malady of the system. It shatters the confidence of the litigant, despite the impairment already caused.

18. We wish to add, as an epilogue, that this case can provide a catalytic agent for the High Courts to evolve some concrete scheme for winching to the fore similar long pending matters, lying in torpidity at the bottom of the crammed list of pending cases in the High Court after passing the initial orders, keeping the operative part of

decrees in abeyance. It is worth considering whether a cell can be set up in each of such High Courts where the piles of backlog are a stirring problem, to pick out such cases to be brought to the notice of the Chief Justice of the High Court concerned so that he could take appropriate steps in the matter."

15. The Apex Court in ***G.C. Kapoor v. Nand Kumar Bhasin, 2001 (2) Allahabad Rent Cases Page No. 603*** has relied upon the judgment of Datta Laxman as well as Raghunath Pale and has come to the conclusion as under:-

"It is settled position of law that bona fide requirement means the requirement must be honest and not tainted with any oblique motive and is not a mere desire or wish. In Dattaraya Laxman Kamble v. Abdul Rasul Moulali Kokunde and Another, 1999 (4) SCC 1: 1999 SCFBRC 292, this Court while considering the bona fide need of the landlord was of the view that when a landlord says that he needs the building for his own occupation, he has to prove it but there is no warrant for 'presuming that his need is not bona fide'. It was also held that while deciding this question, court would look into the broad aspects and if the Court feels any doubt about bona fide requirement, it is for the landlord to clear such doubt."

16. The only ground taken is that the petitioner has no experience of running the tailoring business.

17. In ***Mohinder Prasad Jain V. Manohar Lal Jain AIR 2006 SC 1471,*** it has been observed as under:

> *"There is no law which provides for such a pre-condition. It may be so where a licence is required for running a business, a statute may prescribe certain qualifications or pre-conditions without fulfillment whereof the landlord may not be able to start a business, but for running a wholesale business in Ayurvedic medicine, no qualification is prescribed. Experience in the business is not a pre-condition under any statute. Even no experience therefore may be necessary. If the respondent has proved his bona fide requirement to evict the appellant herein for his won purpose, this Court may not, unless an appropriate case is made out, disturb the finding of fact arrived at by the Appellate Authority and affirmed by the High Court.*
>
> *12. For the foregoing reasons, there is no merit in this appeal. It is dismissed. In the facts and circumstances of the case, there shall be no order as to costs."*

18. Rule 16 of the Act No. XIII of 1972 has been interpreted in the case of ***Munni Lal Gupta Vs. 7th Additional District and Sessions Judge, Aligarh reported in 1997 (1) A.R.C. 301.*** After relying upon the judgment of ***Rajendra Kumar Gupta Vs.Gopal Krishan and other, A.I.R. 1995 Allahabad 82,*** it has been held that suitable alternative accommodation, which may become available on an effort being made in that direction is also a

factor to be considered and want or earnest efforts in looking for suitable alternative accommodation, disentitles protection given to the tenant while considering the comparative hardship of the parties. The observations in the decision of Munni Lal Gupta (supra) are quoted below:-

> *"A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the facts and circumstances of the case, it has been held that the petitioner was wanting in earnest efforts in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and Others, AIR 1995 Alld. 82: 1994 ARC 11, it has been held by Sudhir Narain, J. and I concur with the view taken therein that "one of the principles for considering comparative hardship of the parties is to find out as to whether the tenant had made a sincere efforts to find out alternative accommodation and had placed materials before the authorities to come to their conclusions that he made such an effort". The fact that earlier application for release, met the fact of rejection some 10 years ago, cold not be projected backward to operate as an obstacle in the way of the release application being allowed as with the passage of time, the situation has undergone considerable change. Indubitable, landlord Sanjai Gupta did his M.A. after rejection of the earlier applications and his failure to secure employment*

for himself, lends congency to his moving the present application."

19. From the perusal of the record, it appears that no efforts have been made out by the respondent/tenant to search out the alternative accommodation.

COMPARATIVE HARDSHIP

20. The Apex Court in ***Sushila Vs. IInd A.D.J. Banda reported in 2003 SCFBRC 109*** after considering Rule 16 has observed as under:-

"As observed earlier it is clear that the length of period of tenancy as provided under clause (a) of sub-rule 2 of Rule 16 of Rules, 1972 is only one of the factors to be taken into account in context with other facts and circumstances of the case. It cannot be a sole criterion or deciding factor to order or not the eviction of the tenant. Considering the facts in the light of Rule 16 pressed into service on behalf of the respondent, we find that according to the guidelines provided therein balance tilts in favour of the unemployed son of the landlady whose need is certainly bonafide and has also been so accepted by the respondent before us."

21. In the case of ***Arvind Kumar Vs. IInd A.D.J., Etawah reported in Allahabad Rent Cases, 1997 (1) Page 304*** Rule 16(2)(a) has been interpreted and it has been held as under:-

"It *admits of no doubt that according to clause (a), sub-rule (2) of Rule 16, greater the period since*

when the tenant has been carrying on his venture in the building, less the justification for allowing the application but at the same time, having regard to over all facts and circumstances of the case, I am persuaded to the view that the findings recorded by the Authorities under the Act in relation to bonafide requirements of the landlord cannot be assailed and whittled down merely because the petitioner had been carrying on his business in the shop in question since the year 1977. It is explicitly postulated in clause (b), sub-rule (2) of Rule 16 that where the tenant has available with him suitable accommodation to which he can shift his business without the peril of substantial loss there shall be greater justification for allowing the application. The expression "available with him" in this sub-rule does not necessarily mean actual physical availability. A suitable alternative accommodation which may become available on an effort being made in that direction is also in the comprehension of the expression and in the fats and circumstances of the case, it has been held that the petitioner was wanting in earnest effort in looking for suitable alternative accommodation, notwithstanding the fact that the litigation between the parties had protracted to considerable stretched. In Rajendra Kumar Gupta Vs. Gopal Kishan and others, AIR 1995 Alld. 82: 1994 (2) ARC 11, it has been held by Sudhir Narain J. and I concur with the view taken therein……."

22. In ***Ansuyaben Kantilal Bhatt Vs. Rashiklal Manilal Shah and another AIR 1997 SC 2510,*** it has been stated in very beginning of the judgment:-

> *"This is one of the classic instances of the cases holding the law that "delay defeats justice", the landlord filed a suit in 1966 for eviction of the tenant for personal occupation and today after 31 years, we disposing of the matter ate level of this Court."*

23. In the case of **Mohd. Arif Vs. IIIrd addl. District Judge, Pilibhit** reported in **2005(2) ARC 793,** relying upon the various judgments of the Hon'ble Supreme Court, it was held in para 7 as under:

> "7. When both the Courts below have rejected the release application of the landlord and judgments are found to be erroneous in law by writ Court, matter is normally remanded. However, that formula is not to be necessarily followed in every case particularly when the matter is pending for long. Release application in the instant case was filed in the year 1984 and this writ petition is pending since 1989. The Supreme Court in, **AIR 2002 SC 200 : 2001 (2) ARC 603, G.C. Kapoor v. N.K. Bhasin** allowed the release application out rightly which had been rejected by the Prescribed Authority , lower appellate Court as well as High Court. In my opinion, it is a fit case where ultimate relief shall be granted to the landlord. Supreme Court has also held in **2004 SCFBRC 66 : 2004(1) ARC 137 : 2004 ACJ 304 (SC) R.E.V. Gounder v. V.V.P. Temple and 2002(2) ARC 298 (Supreme Court) R.C. Kesharwani v. Dwarika Prasad** that when the matter is pending for long, remand must be avoided. Supreme Court in its authority reported in **Shail v. Manoj Kumar, 2004 ACJ 1213,** placing reliance upon **Surya Dev Rai v. R.C. Rai, 2003 (6) SCC 675: 2003(2) ARC 385,** has held that in exercise of writ jurisdiction High

> Court has the jurisdiction also to pass itself such a decision or direction as the inferior Court or tribunal should have made."

24. The same view has been taken in the case of **Kelawati (Smt.) Vs. Special Judge (EC Act), Moradabad and others** reported in **2006(1) ARC 78,** wherein in para 5 it was held as under:

> "5. When both the Courts below have rejected the release application of the landlord and judgments are found to be erroneous in law by writ Court, matter is normally remanded. However, that formula is not to be necessarily followed in every case particularly when the matter is pending for long. Release application in the instant case was filed in the year 1991. The Supreme Court in **G.C. Kapoor v. N.K. Bhasin (AIR 2002 SC 200 : 2001 SCFBRC 541 : 2001(2) ARC 603)** allowed the release application out rightly which has been rejected by the Prescribed Authority / Lower Appellate Court as well as High Court. The Supreme Court in **R.E.V. Gounder v. V.V.P. Temple (2004 ACJ 204 (SC))** has held that when the matter is pending for long, remand must be avoided."

25. In view of the aforesaid, it would not be in the interest of justice to remand this case at this stage.

26. A perusal of the entire record shows that the Prescribed Authority has rightly allowed the application for release. Once a family settlement had taken place ion the year, 1994, the petitioner has every right to expand his business and for that purpose sufficient material has been given that he will start the business of tailoring work in order to satisfy the customers. There is nothing on the record that the petitioner is having any other premises for the purposes of tailoring work and as such the right to augment is income is valuable right of the landlord as held by the Apex Court in the decisions

referred above, therefore, need being bonafide, comparative hardship also lies in favour of the petitioner. Further, no efforts having been taken by the tenant to search out any other accommodation, the writ petition, therefore, deserves to be allowed.

27. However, in view of the above, writ petition deserves to be allowed. However, the respondent no. 3 has sought time to vacate the premises in question. Respondent no. 3 is directed to vacate the premises in question by 30th April, 2007 subject to the flowing conditions:-

(a) he furnishes undertaking by or before 15th October, 2006 to vacate the premises by or before 30th April, 2007.

(b) he pays the entire damages by 15th October, 2006.

(c) he pays the month to month rent in the first week of every month regularly.

On failure of the aforesaid conditions, no relief shall be available with the respondent no.3 and the petitioner/landlord shall proceed forthwith to evict the respondent no.3 from the premises in dispute.

28. Writ petition is allowed. No order as to costs.

(Rajesh Tandon, J.)

21.08.2006
Rathour